IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No. 267of 2000.

Judgement reserved on: 21.8.2007

Date of decision: 13.9.2007.

State of H.P. **…….Appellant**

Vs.

Maan Singh **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant : Mr. M.L. Chauhan, Addl. Advocate General.

For the Respondent : Mr. Sanjeev Kuthiala, Advocate.

Kuldip Singh, Judge.

The State is in appeal against the judgment dated 19.11.1998 passed by learned Addl. Sessions Judge, Sirmaur District at Nahan in Criminal Appeal No.38-N/10 of 1998 acquitting Maan Singh accused in case arising out of FIR No.132/95 , Police Station Sadar Nahan.

2. The brief facts are that Jiwan Ram, Sabir Mohd. and Balram, all employees of IPH department, Jamta at Devka Purla Pump House jointly lodged an FIR Ex.PA on 20.5.1995. It has been alleged that on 19.5.1995 at about 11 a.m. while they were on duty at Pump House, accused Sirmaur Singh, Maan Singh and Naresh Kumar came and they gave beatings to them with fist blows, as a

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

result of which victims suffered injuries. The cause of giving beatings was alleged non supply of water by the complainants to the accused. The accused also threatened the victims that they would kill them. In these circumstances, FIR was registered, victims were sent for medical examination and they were accordingly examined and their MLCs Ex.PW-4/B, Ex.PW-4/E and Ex/PW-4/H were prepared. After completion of investigation three accused namely Sirmaur Singh, Maan Singh and Naresh Kumar were sent to face trial and the accused were charge-sheeted under Sections 332, 506(II) read with Section 34 IPC. The prosecution examined nine witnesses. The accused were examined under Section 313 Cr.P.C., they claimed themselves to be innocent and have been falsely implicated. The learned Chief Judicial Magistrate convicted the accused under Sections 332, 506 (II) read with Section 34 IPC on 15.6.1998 and on 16.6.1998 imposed the sentence.

3. The accused Sirmaur and Naresh Kumar filed joint appeal being Criminal Appeal No.38-N/10 of 1998 against their conviction and sentence, accused Maan Singh filed Criminal Appeal No.50-N/10 of 1998 against his conviction and sentence. The learned Addl. Sessions Judge decided both the appeals by common judgment dated 19.11.1998 and acquitted all accused under Sections 332, 506(II) read with Section 34 IPC. The State has filed appeal against the judgment dated 19.11.1998 passed by learned Addl. Sessions Judge, in Criminal Appeal No.50-N/10 of 1998. The learned Addl. Advocate General on 21.8.2007 on instructions received from his office made a statement at the bar that no appeal has been filed

against the judgment dated 19.11.1998 passed by learned Addl. Sessions Judge, in Criminal Appeal No.38-N/10 of 1998 titled Sirmaur Singh and another Vs. State of H.P.

4. I have heard the learned counsel for the parties and gone through the record. The learned Addl. Advocate General has submitted that the learned Addl. Sessions Judge has misinterpreted the material on record. The prosecution has proved the case against the accused Maan Singh. The judgment of conviction and sentence recorded by learned Chief Judicial Magistrate has been wrongly set aside by learned Addl. Sessions Judge. The learned counsel for the respondent-accused has supported the impugned judgment and has also made additional submission that on the basis of FIR No.132 of 1995, three persons namely Sirmaur Singh, Maan Singh and Naresh Kumar were prosecuted. The allegations against all the three persons, are common. The State has opted not to file appeal against the acquittal of two accused namely Sirmaur Singh and Naresh Kumar, therefore, judgment of acquittal of learned Addl. Sessions Judge against Sirmaur Singh and Naresh Kumar has become final. In these circumstances the respondent is also entitled to acquittal.

5. In FIR Ex.PA the case of the complainants is that Sirmaur Singh caught hold PW-1 Jiwan Ram by his neck and gave him fist blows and slaps, accused Maan Singh pressed the neck of PW-3 Balram and gave him fist blows and slaps. The accused Naresh Kumar gave slaps and fiist blows to PW-2 Shabir Mohd. PW-2 in the Court has stated that all accused gave beatings with fist blows. In his cross-examination he named Maan Singh for giving fist

blows and slaps to him. In FIR the allegation is that Maan Singh gave fist blows and slaps to PW-3 Balram. In the like manner PW-3 Balram contradicted the version recorded in FIR Ex.PA when he appeared in the Court. He has deposed that on reaching the spot all accused started giving beatings to them, as a result of which the complainants received injuries. In FIR he has named only Maan Singh for giving beatings to him. In the Court he has stated that accused hit him on head with 'tak' but this is not so recorded in FIR. There are contradictions and improvements which have been noticed by learned Addl. Sessions Judge in the statements of PW-1, PW-2 and PW-3 recorded in the Court.

6. The medical evidence in the form of MLCs Ex.PW-4/B, Ex.PW-4/E and Ex.PW-4/H does not support the prosecution case. PW-4 Dr. Gian Chand has noticed mild swelling and no tenderness in case of Shabir Mohd. PW-2, though as per the case of PW-2 as a result of beatings given by the accused has sustained injuries. On the person of PW-3 Balram, the doctor has noticed only mild tenderness and mild oedema. The doctor noticed fist blows on the right side of forehead but this is not the case of the prosecution as per FIR Ex.PA. In the case of PW-1 also, the doctor did not notice any bleeding or tenderness or oedema except small abrasion on the parietal region. The learned Addl. Sessions Judge has minutely considered the contradictions, improvements in the prosecution story vis-à-vis medical evidence.

7. It is the case of the complainants that at the time of occurrence PW-6 Bhushan Kumar a superior officer of the

department was present on the spot. Bhushan Kumar has stated that complainants and accused were loudly talking about water. He has further stated that in his presence no beatings were given by any body. He was declared hostile. He has admitted that at the relevant time the Pump was working. He has also stated that accused were standing outside the boundary of the Pump House. In these circumstances, if the accused were outside the boundary of the Pump House and were simply talking loudly with the complainants, it can not be said that they have committed offence under Sections 332, 506(II) read with Section 34 IPC.

8. The learned Addl. Sessions Judge has rightly appreciated the material on record. The State by not filing the appeal against acquittal of accused Sirmaur Singh and Naresh Kumar recorded by learned Addl. Sessions Judge has accepted the acquittal of Sirmaur Singh and Naresh Kumar. The evidence is common for accused Maan Singh also. No case of interference is made out. The appeal is accordingly dismissed.

(Kuldip Singh)
Judge.

September 13, 2007
(sks)